

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Washington, D.C.

---

**In the Matter of:**

**AXEL BONILLA,**

**Respondent.**

---

\*  
\*  
\*  
\*  
\*  
\*  
\*

**DOCKET NO. 07-3420-DB**

**DEBARRING OFFICIAL'S DETERMINATION**

**INTRODUCTION**

By Notice dated March 15, 2007 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent AXEL BONILLA that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a five-year period from the date of the final determination of this action. The Notice further advised Respondent that the proposal to debar him was in accordance with the procedures set forth in 24 CFR part 24<sup>1</sup>. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court, District of New Jersey, for violating 18 USC 1341 (Mail Fraud). For Respondent's conviction on the two counts in the Information to which he pleaded guilty, Respondent was sentenced to an eighteen-month term of imprisonment and ordered to pay restitution of \$1, 531,062.00, and placed on supervised release for three years.

---

<sup>1</sup> HUD published a final rule on December 27, 2007 (72 FR 73484) that relocated and recodified 24 CFR part 24 as 2CFR part 2424. HUD's December 27, 2007, rule stated that the rule "adopts, by reference, the baseline provisions of 2 CFR 180 "the government-wide rule published by OMB on August 31, 2005 (70 FR 51863) setting forth guidance for agencies with respect to nonprocurement debarment and suspension. However, because this matter arose before publication of HUD's final rule, for the convenience of the reader, references herein will be to the regulations in their former location at 24 CFR part 24.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on June 13, 2008,<sup>2</sup> before the Debarring Official's Designee, Mortimer F. Coward. Respondent did not appear at the hearing. Joel Foreman, Esq. appeared on behalf of HUD.

### SUMMARY

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of five years from the date of this determination. My decision is based on the administrative record in this matter, which includes the following information:

- (1) The Notice of Proposed Debarment dated March 15, 2007.
- (2) An information filed in the United States District Court, District of New Jersey, charging Respondent with two counts of mail fraud.
- (3) The Judgment in a Criminal Case filed December 7, 2006, finding Respondent guilty of two counts of mail fraud.
- (4) A letter dated April 20, 2007, to the Debarring Official's Designee from Respondent.
- (5) The Government's Brief in Support of a Five-Year Debarment filed June 1, 2007 (including all attachments and exhibits thereto).

### GOVERNMENT COUNSEL'S ARGUMENTS

Government counsel contends that, as recited in the two counts of the Information to which Respondent pleaded guilty, Respondent was a registered broker who provided investment services to investors and advised them to transfer large sums of money to entities owned or controlled by him. Respondent promised the investors that he would invest their funds in a tax-deferred investment. During the period January 2000 to December 2002, when Respondent engaged in this scheme, he converted about \$1.2 million of his investors' funds to his own use. Respondent covered up his scheme by creating bogus documents that he mailed to investors, representing falsely that the

---

<sup>2</sup> This matter was originally scheduled for hearing on June 22, 2007. On June 21, 2007, at the request of the Government, and based on the Government's representation that the parties were seeking a disposition of this matter without a hearing, the matter was stayed for 180 days. The Government later filed a request for a second 180-day stay, which, by Order of the Debarring Official's Designee, was granted on January 25, 2007. Thereafter, the Government notified the Debarring Official's Designee that the parties were unable to reach a settlement and the matter was docketed for a hearing on June 10, 2008. Respondent was duly notified of the date of the hearing by Order issued by the Debarring Official's Designee. The hearing was subsequently moved to June 13, 2008. Respondent was mailed the Order notifying him of the new date. When the matter was called on June 13, 2008, as scheduled, Respondent failed to appear.

investors' money had been invested as promised. In furtherance of his scheme, Respondent used money embezzled from new investors to pay old investors.

The second count in the Information alleges that Respondent was a loan officer who enriched himself through a scheme to sell properties to unqualified borrowers with fraudulently obtained FHA mortgages. Respondent engaged in this fraudulent plan from about 1997 through 2001. Respondent's scheme involved his making and use of false and fictitious documents and statements to assist the unqualified borrowers in obtaining FHA insured mortgages. Respondent then paid an underwriter for approving the fraudulent loans, disguising the payments as loan fees.

Counsel argues that HUD's debarment regulations apply to Respondent, because he is a "[p]erson who has been, is, or may reasonably be expected to be, a participant in a covered transaction." See 2 CFR 180.105. Counsel continues that FHA loans are covered transactions, pursuant to 2 CFR 180.200 and 180.970, and as a loan officer Respondent submitted loan applications for FHA-insured loans. Thus, Respondent was a participant in a covered transaction.

Government counsel next argues that Respondent's conviction on two counts of mail fraud provides cause for debarment under 2 CFR 180.800(a)(1). Respondent is also subject to debarment under 2 CFR 180.800(a)(3), because his "conviction included the making of false statements." Additionally, counsel argues that Respondent's conviction on "two entirely separate fraud schemes places [his] present responsibility in grave doubt," and subjects him to debarment under 2 CFR 180.800(a)(4). Further, Counsel contends that Respondent's "conviction demonstrates that he currently represents an unacceptable risk to the government," thus the public interest requires Respondent's debarment. See 2 CFR 180.110(c).

Government counsel justifies the imposition of a five-year period of debarment based on the "enormity of [Respondent's] wrongdoing" as demonstrated in the "extent of the harm, the pattern of wrongdoing evidenced by the separate schemes, and the extensive planning evident in the schemes." Counsel adds further that Respondent's guilty plea, involving as it does facts evidencing his knowing submission of fraudulent loans to HUD, provides the basis for a five-year debarment, "without even considering the lack of present responsibility indicated by [Respondent's] pyramid scheme."

Counsel reviews the factors submitted by Respondent in mitigation of Respondent's conduct, but concludes that "none of them are sufficiently substantial to warrant consideration." In particular, counsel asserts, in response to Respondent's argument, that "it is well established that the passage of time does not, in itself, constitute a mitigation factor." [Citation omitted] On the whole, counsel dismisses Respondent's mitigation arguments as "a combination of attestations of ignorance, attempts to shift blame, and after-the-fact justifications" which "merely confirm that he is not presently responsible."

Counsel concludes that a five-year period of debarment is required to protect HUD and the public interest from Respondent's lack of integrity and dishonest behavior.

### RESPONDENT'S ARGUMENTS

Respondent argues in his submission that neither the sentencing judge nor the New Jersey State Banking and Insurance Department imposed any limitation or exclusion with respect to his continuing activities as a mortgage solicitor. According to Respondent, he was not a mortgage solicitor in 1997, as alleged in the Information, thus he "was not a representative of [sic] §24.915 . . . at the time." Respondent claims that another person was responsible for the mortgage solicitation activities that "led to the initial loss to the government." Respondent further argues that after he was properly trained as a mortgage solicitor, he had no "material misconduct with any employing mortgage co."

Respondent contends that "§24.800(a)(4) relates to 'present responsibility,' [and his] actions pertain to events almost a decade ago." Thus, his "events were 'previous responsibility,' not present [responsibility]."

Respondent requests that "debarment not . . . apply because of §24.860(b)." In this regard, Respondent argues that his misconduct was of short duration; he has accepted responsibility for his actions; he has agreed to make full restitution; he cooperated fully with the HUD investigator, disclosing all relevant information; and that he is now an educator of moral standards to others coming into the mortgage solicitation business.

Respondent concludes by requesting that he not be debarred because he now knows what should not be done in the mortgage industry.

### FINDINGS OF FACT

1. Respondent during various times was employed as a loan officer with a mortgage company that originated FHA-insured loans and as a registered broker with several companies.
2. Respondent engaged in two separate fraudulent schemes that resulted in substantial losses to private investors and to HUD.
3. Respondent's first scheme in which he converted approximately \$1.2 million of investors' money to his own use lasted from January 2000 to December 2002.
4. The second scheme, in which Respondent used fictitious and fraudulent documents to enable unqualified borrowers to obtain FHA-insured mortgages, lasted from 1997 to April 27, 2001.
5. Respondent pleaded guilty to two counts of mail fraud resulting from his misconduct and was sentenced to eighteen months in prison, three years' supervised release, and ordered to make restitution of \$1,531,062.00.

## CONCLUSIONS

Based on the above Findings of Fact, I have made the following conclusions:

1. Respondent was a participant in a covered transaction as defined in 2 CFR part 180.
2. Respondent's criminal conviction serves as the basis for his debarment.
3. Pursuant to 2 CFR 180.800, a conviction for fraud, *inter alia*, is a cause for debarment.
4. Respondent's criminal conduct, i.e., his two schemes, stretched over a period of several years ending in 2001 and 2002, respectively.
5. Respondent has not made restitution as ordered by the court.
6. Respondent provided no documentation or evidence of his new role as an educator in the mortgage industry.
7. Respondent's acceptance of responsibility for his wrongdoing is a mitigating factor in determining the appropriate period of debarment to be imposed.
8. The duration of Respondent's misconduct and the passage of time since the wrongful acts were committed are factors that have been considered in determining whether Respondent should be debarred, and, if so, the appropriate period of debarment.
9. The seriousness of Respondent's acts and the financial harm caused thereby are factors considered in imposing the period of debarment on Respondent. *See* 2 CFR 180.865.
10. Respondent provided no independent evidence that he is presently responsible. *See* 2 CFR 180.855.
11. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
12. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
13. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honesty and integrity.

## DETERMINATION

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a period of five years from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

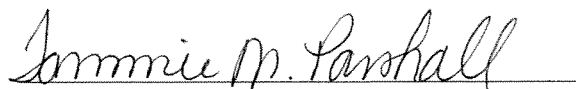
Dated: 25 July '08



Henry S. Czauski  
Debarring Official

CERTIFICATE OF SERVICE

I hereby certify that on this 30<sup>th</sup> day of July, 2008, a true copy of the  
DEBARRING OFFICIAL'S DETERMINATION was served in the manner indicated.



Tammie M. Parshall  
Debarment Docket Clerk

**HAND-CARRIED**

Mortimer F. Coward, Esq.  
Debarring Official's Designee

Joel Foreman, Esq.  
Dane Narode, Esq.  
Government Counsel

**FIRST CLASS MAIL**

Axel Bonilla  
